

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED EDUCATORS OF SAN  
FRANCISCO,

Petitioner,

v.

SAN FRANCISCO UNIFIED SCHOOL  
DISTRICT,

Respondent.

No. C 05-02828 WHA  
Related to:  
No. C 78-01445 WHA

**ORDER GRANTING  
PETITION TO COMPEL  
ARBITRATION**

**INTRODUCTION**

In this labor dispute, petitioner seeks to enforce arbitration clauses contained in two collective bargaining agreements. Because this order finds that there is a valid agreement to arbitrate and it encompasses (at least some of) the grievances at issue, the petition is **GRANTED**.

**STATEMENT**

Petitioner United Educators of San Francisco is the bargaining representative for certificated employees (*i.e.*, teachers, counselors, nurses, etc.) and paraprofessional employees of respondent San Francisco Unified School District. On behalf of these two groups of employees, petitioner negotiated two collective bargaining agreements (Holtzman Exhs. H & I). Both CBAs contained detailed grievance procedures, culminating in binding arbitration (Holtzman Exh. H at Art. 19.8.3; Exh. I at Art. 18.8.3). Petitioner filed separate grievances, one on behalf of the certificated employees and the other on behalf of the paraprofessional employees, appended as exhibits to the petition to compel arbitration (*see also* Holtzman

1 Exhs. K & L). This petition was filed in San Francisco Superior Court on June 13, 2005, after  
2 respondent refused to submit to arbitration.

3 Respondent removed the case on July 12, 2005. It argues that the grievances stem from  
4 the implementation of a desegregation consent decree in the related case listed above. By  
5 stipulation of the parties in that action, the Dream Schools initiative, also known as Dramatic  
6 Accelerated Educational Reform, was incorporated into the consent decree. By order dated  
7 October 18, 2004, the Court required respondent to “take all necessary steps” to reconstitute  
8 seven designated schools in time for the 2005–06 school year (Holtzman Exh. B).

9 “Reconstitution” means that an existing school is recreated from scratch, whereby the entire  
10 faculty and administration are replaced with a new staff. Petitioner filed the grievances at issue  
11 because employees at the seven schools targeted for conversion into Dream Schools were asked  
12 to reapply for their jobs and involuntarily transferred to other schools if they were not selected.  
13 It claims that this violated the negotiated evaluation procedures in the CBAs. In addition,  
14 petitioner argues that the certificated employees (*i.e.*, teachers) who *were* selected for Dream  
15 Schools are not being adequately compensated for working longer hours, in violation of other  
16 CBA provisions.

17 Respondent asserts that the consent decree trumps any alleged violation of the CBAs. In  
18 short, it argues that arbitration should not proceed because there is a risk that the arbitrator  
19 would incorrectly interpret the obligations of the school district under the consent decree, in  
20 conflict with the prior rulings of this Court. It points to several provisions suggesting that the  
21 parties openly acknowledged the supremacy of the consent decree. Article 39 of the CBA  
22 applicable to certificated employees provides in relevant part:

23 Subject to compliance with the terms of the Consent Decree . . . the  
24 District and the Union shall: (1) continue to honor their obligations under  
25 the collective bargaining agreement, and (2) also honor their obligations to  
26 bargain and/or consult on matters . . . including the impact, if any, which  
27 compliance with said Consent Decree has on such matters. The Union and  
28 the District agree that the staffing of personnel at those schools impacted  
by the Consent Decree shall be in accordance with a plan developed  
pursuant to the Consent Decree to successfully implement the approved  
educational programs for the students. Only teachers who apply for  
positions may be selected; those selected shall be the most qualified based  
upon the plan and educational programs.

1 Similarly, Article 21.6 of the CBA applicable to paraprofessional employees provides:

2 The District and the Union reaffirm that the provisions of their collective  
3 bargaining agreement, including this Article [concerning layoffs], shall be  
4 in compliance with the terms of the Consent Decree, *NAACP, et al. v.*  
5 *San Francisco Unified School District*, Civil No. C78-1445 WHO. The  
District and the Union agree that United Support Personnel staffing, as  
contemplated herein, at schools impacted by said Consent Decree shall be  
in accordance with said Decree Plan.

6 In short, respondent argues that the parties never intended any disputes arising from the school  
7 district's implementation of Dream Schools to be subject to arbitration. In the alternative,  
8 respondent urges the Court to exercise its discretion under California Civil Procedure Code  
9 § 1281.2(c) and refrain from enforcing the arbitration clause due to the possibility of conflicting  
10 rulings.

### 11 ANALYSIS

12 The parties agree that the determination of whether an issue is subject to arbitration is  
13 governed by California law, not federal law. On a petition to compel arbitration, the court shall  
14 order the petitioner and the respondent to arbitrate if it determines that an agreement to arbitrate  
15 the controversy exists, unless (a) the right to arbitration has been waived by petitioner; or  
16 (b) grounds exist for revocation of the agreement; or (c) a party to the arbitration agreement is  
17 also a party to a pending court action or special proceeding arising out of the same transaction  
18 or series of related transactions and there is a possibility of conflicting rulings on a common  
19 issue of law or fact. If the third exception applies, the court (1) may refuse to enforce the  
20 arbitration agreement; (2) may order intervention or joinder of all parties in a single action;  
21 (3) may order arbitration among the parties who have agreed to arbitrate and stay the pending  
22 court action; or (4) may stay arbitration pending the outcome of the pending court action. Cal.  
23 Civ. Proc. Code § 1281.2. This order notes that the parties appear to agree that the grievance  
24 procedures outlined in the CBAs (and other provisions thereof) are otherwise enforceable. The  
25 dispute is whether grievances that stem from the school district's obligations under the consent  
26 decree are also subject to arbitration.

27 "Arbitration is, of course, a matter of contract, and the parties may freely delineate the  
28 area of its application." *O'Malley v. Wilshire Oil* 59 Cal.2d 482, 491 (1963). Any doubts,

1 however, should be resolved in favor of submitting the grievance to arbitration. *Ibid.* Because  
2 there is a strong policy favoring arbitration agreements, “waivers are not to be lightly inferred  
3 and the party seeking to establish a wavier bears a heavy burden of proof.” *Saint Agnes Med.*  
4 *Ctr. v. Pacificare of Calif.*, 31 Cal.4th 1187, 1195 (2003).

5 Respondent argues that petitioner waived the right to arbitrate any grievances that arose  
6 from the school district’s implementation of Dream Schools as required under the consent  
7 decree. This order agrees as to the staffing issue. But, the provisions in the CBAs cited above  
8 do *not* bar an arbitrator from hearing grievances concerning the district’s obligations to  
9 employees now at Dream Schools. The arbitrators may decide whether there was any violation  
10 of the CBAs independent of the parties’ agreement that staffing (*i.e.*, selection of employees) at  
11 schools impacted by the consent decree would be in accordance with the consent decree itself.  
12 Petitioner correctly argues that the awards, if any, are not self-enforcing. Respondent may thus  
13 file a petition to vacate the arbitration awards if they are inconsistent with the consent decree.

14 Finally, it is not clear that petitioner’s grievances arose out of the same transaction or  
15 series of transactions as any pending court actions. The grievances stemmed from the  
16 reconstitution of the seven new schools targeted for conversion into Dream Schools. In the  
17 related action listed above, however, the reconstitution of these schools was a proposed remedy  
18 for, rather than the basis of, the underlying allegations of *de jure* segregation. Even assuming  
19 that California Civil Procedure Code § 1281.2(c) applied here, the Court would decline to  
20 exercise its discretion to refuse to enforce the arbitration clause, at least as described below.

### 21 CONCLUSION


22 For the foregoing reasons, the petition to compel arbitration is **GRANTED**. The parties  
23 are ordered to proceed immediately to arbitration, subject to the following conditions:

- 24 (1) Under no circumstances may the selected arbitrators consider whether the  
25 manner of selecting employees for the seven new Dream Schools was consistent  
26 with the school district’s obligations under the consent decree. In other words,  
27 the arbitrators may not grant any award to involuntarily transferred employees on  
28 the basis that they were not selected for Dream Schools.

- 1 (2) With respect to teachers that *were* selected for the Dream Schools, the arbitrator  
2 can decide if the terms and conditions of their employment violated the CBAs or  
3 other agreements negotiated between the parties. Be aware that the decree fully  
4 intended that Dream School teachers would be required to work longer hours per  
5 week than other teachers and no award can or should be based on that difference,  
6 except to the extent that pay was not adjusted accordingly.
- 7 (3) The arbitration proceedings must be completed by **JUNE 30, 2006**.
- 8 (4) The Court retains jurisdiction to enforce (or vacate) any award.

9  
10 **IT IS SO ORDERED.**

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12 Dated: November 17, 2005

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15 WILLIAM ALSUP  
16 UNITED STATES DISTRICT JUDGE  
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